

IN THE SENATE

SENATE BILL NO. 1155

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS; TO PROVIDE LEGISLATIVE FINDINGS; AMENDING SECTION 18-3001, IDAHO CODE, TO REVISE THE AMOUNT OF A FINE AND TO PROVIDE FOR A MISDEMEANOR; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 44, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROHIBIT EMPLOYMENT OF UNAUTHORIZED ALIENS, TO PROVIDE PROVISIONS RELATING TO THE FILING AND INVESTIGATION OF A COMPLAINT, TO PROVIDE FOR A MISDEMEANOR, TO PROVIDE FOR NOTICE, TO PROVIDE PROVISIONS RELATING TO ACTIONS AGAINST CERTAIN EMPLOYERS, TO PROVIDE FOR EXCEPTIONS, TO PROVIDE FOR PENALTIES, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL MAINTAIN A DATABASE OF CERTAIN COURT ORDERS, TO PROVIDE FOR APPLICATION OF FEDERAL LAW, TO PROVIDE FOR EXCEPTIONS AND AN AFFIRMATIVE DEFENSE, TO PROVIDE PROVISIONS RELATING TO CERTAIN EMPLOYMENT AUTHORIZATIONS, TO PROVIDE FOR COMPLIANCE WITH FEDERAL LAW, TO PROVIDE THAT THE STATE OF IDAHO SHALL VERIFY CERTAIN EMPLOYMENT AUTHORIZATIONS, TO PROVIDE FOR A PERFORMANCE AUDIT, TO REQUIRE POLITICAL SUBDIVISIONS TO VERIFY CERTAIN EMPLOYMENT AUTHORIZATIONS, TO PROVIDE PROVISIONS RELATING TO THE AWARD OF CERTAIN CONTRACTS AND TO DEFINE A TERM; AMENDING SECTION 49-303, IDAHO CODE, TO PROVIDE THAT THE IDAHO TRANSPORTATION DEPARTMENT SHALL NEITHER ISSUE A DRIVER'S LICENSE TO AN ILLEGAL ALIEN NOR TO CERTAIN OTHER PERSONS, TO PROVIDE THAT THE STATE OF IDAHO SHALL NOT HONOR CERTAIN DRIVER'S LICENSES, TO PROVIDE FOR PUBLIC POLICY, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 2, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-218A, IDAHO CODE, TO PROHIBIT MUNICIPAL SANCTUARIES, TO PROVIDE PROVISIONS RELATING THERETO AND TO DEFINE A TERM; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3035D, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO NOTICE FROM THE STATE TAX COMMISSION TO CERTAIN EMPLOYERS; PROVIDING SEVERABILITY; AND TO PROVIDE EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE FINDINGS. The Legislature finds that this act complies with the requirements of 8 U.S.C. section 1324a(h)(2) by discouraging the knowing employment of unauthorized aliens through licensing and similar laws. It is the intention of the Legislature to ensure that those who are employed in Idaho are legally authorized to

work in this state. The Legislature recognizes that there are industries in Idaho that are in need of temporary and seasonal workers, and that historically these workers have come to the United States from other countries through legal guest worker programs. While the Legislature encourages our congressional delegation to pursue development of a guest worker program to meet the needs of Idaho employers, such a program should not reward those who have already broken our laws or provide any form of amnesty.

SECTION 2. That Section 18-3001, Idaho Code, be, and the same is hereby amended to read as follows:

18-3001. FALSE PERSONATION. (1) Every person who falsely personates another, and in such assumed character, either:

~~1-(a)~~ Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or

~~2-(b)~~ Verifies, publishes, acknowledges or proves in the name of another person, any written instrument, with the intent that the same may be recorded, delivered and used as true; or

~~3-(c)~~ Does any act whereby, if it were done by the person falsely personated, he might in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

Is punishable by imprisonment in the county jail not exceeding two (2) years, or by a fine not exceeding five thousand dollars (\$5,000).

(2) Every person who falsely personates another and in such assumed character attempts to obtain or does obtain employment shall be guilty of a misdemeanor.

SECTION 3. That Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 4, Title 44, Idaho Code, and to read as follows:

CHAPTER 4 EMPLOYMENT OF UNAUTHORIZED ALIENS

44-401. SHORT TITLE. This chapter may be cited as the "Employment of Unauthorized Aliens Act."

44-402. DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Agency" means any agency, department, board or commission of this state or a county or city that issues a permit or license for purposes of operating a business in this state.

(2) "Employee" means any person who performs services or labor for an employer in the state for wages or other remuneration. For the purposes of this chapter, "employee" shall not refer to a person performing casual domestic labor in or around one's personal abode. For the purposes of this chapter an employer-employee relationship does not exist between a contractor and the employees of a subcontractor.

(3) "Employer" means an individual, corporation, limited liability company, partnership or other recognized legal entity that transacts business in this state, that has a permit or license issued by an agency in this state and employs one (1) or more individuals who perform

1 employment in this state. Employer includes the state of Idaho, any political subdivision of the
2 state and self-employed persons.

3 (4) "E-Verify," formerly known as the basic pilot/employment eligibility verification
4 program, is the internet-based system operated by the federal department of homeland security
5 in partnership with the social security administration that allows participating employers to
6 electronically verify the employment eligibility of their newly-hired employees.

7 (5) "Knowingly employ an unauthorized alien" means the actions described in 8 U.S.C.
8 section 1324a. This term shall be interpreted consistently with 8 U.S.C. section 1324a and any
9 applicable federal rules and regulations.

10 (6) "Legal employment affidavit" means an affidavit that indicates that an employer does
11 not knowingly employ an unauthorized alien, that an employer will not direct any other person
12 to employ an unauthorized alien and that an employer makes a good faith effort to comply with
13 all federal and state laws regarding the authorization for employment in the United States of
14 every employee who is employed by the employer in this state.

15 (7) "License" or "permit" means any agency permit, certificate, approval, registration,
16 charter or similar form of authorization that is required by law and that is issued by any agency
17 for the purposes of operating a business in this state but does not include a license or permit
18 issued by the department of water resources or the department of environmental quality and
19 does not include any professional license issued pursuant to title 54, Idaho Code, or the Idaho
20 state bar association.

21 (8) "Unauthorized alien" means an alien who does not have the legal right or
22 authorization under federal law, to work in the United States as defined in 8 U.S.C section
23 1324a(h)(3).

24 44-403. EMPLOYMENT OF UNAUTHORIZED ALIENS – PROHIBITION – LEGAL
25 EMPLOYMENT AFFIDAVIT – VIOLATION – CLASSIFICATION. (1) An employer shall
26 not employ an alien knowing the alien is an unauthorized alien, as defined in 8 U.S.C. section
27 1324a(h)(3) with respect to such employment.

28 (2) On receipt of a complaint that an employer allegedly knowingly employs an
29 unauthorized alien, the attorney general or prosecuting attorney of the county where the
30 violation allegedly occurs shall investigate whether the employer has violated the provisions
31 of subsection (1) of this section. When investigating a complaint, the attorney general or
32 prosecuting attorney shall verify the work authorization and immigration status of the alleged
33 unauthorized alien with the federal government pursuant to 8 U.S.C. section 1373(c). A
34 state, county or local official shall not attempt to independently make a final determination on
35 whether an alien is authorized to work in the United States. A person who knowingly files a
36 false and frivolous complaint pursuant to this subsection (2) shall be guilty of a misdemeanor.
37 A complaint that is based upon the race, ethnicity or national origin of an employee shall not
38 be acted upon.

39 (3) If, after an investigation, the attorney general or prosecuting attorney determines that
40 the complaint is not frivolous:

41 (a) The attorney general or prosecuting attorney shall notify the United States department
42 of homeland security of the unauthorized alien.

43 (b) The attorney general or prosecuting attorney shall notify the county sheriff or city
44 police of the unauthorized alien.

1 (c) The attorney general shall notify the appropriate prosecuting attorney for the purpose
2 of bringing an action pursuant to subsection (4) of this section if the complaint was
3 originally filed with the attorney general.

4 (4) An action for a violation of subsection (1) of this section shall be brought against
5 the employer by the prosecuting attorney in the county where the unauthorized alien employee
6 is employed. The prosecuting attorney shall not bring an action against an employer for any
7 violation of subsection (1) of this section that occurs with respect to an employee's employment
8 prior to October 1, 2009. A second violation of the provisions of this section shall be based
9 only on an unauthorized alien who is employed by the employer after an action has been
10 brought for a violation of the provisions of subsection (1) of this section.

11 (5) For any action in district court pursuant to this section, the court shall expedite the
12 action, including assigning the hearing, at the earliest practicable date.

13 (6) On a finding of a violation of the provisions of subsection (1) of this section:

14 (a) For a first violation of the provisions of subsection (1) of this section, the court:

15 (i) Shall order the employer to terminate the employment of any unauthorized
16 alien whose unauthorized status has been confirmed with finality by the federal
17 government pursuant to 8 U.S.C. section 1373(c).

18 (ii) Shall order the employer to be subject to a three (3) year probationary period.
19 During the probationary period the employer shall file quarterly reports with the
20 prosecuting attorney identifying each new employee who is hired by the employer
21 at the specific location where the unauthorized alien performed work.

22 (iii) Shall order the employer to file a signed sworn affidavit with the prosecuting
23 attorney within three (3) business days after the order is issued. The affidavit
24 shall state that the employer has terminated the employment of all unauthorized
25 aliens and that the employer does not knowingly employ an unauthorized alien.
26 The court shall order the appropriate agencies to suspend all licenses subject to
27 this chapter that are held by the employer if the employer fails to file a signed
28 sworn affidavit with the prosecuting attorney within three (3) business days after
29 the order is issued. All licenses that are suspended under this paragraph (iii)
30 shall remain suspended until the employer files a signed sworn affidavit with the
31 prosecuting attorney. Notwithstanding any other provision of law, on filing of the
32 affidavit the suspended licenses shall be reinstated immediately by the appropriate
33 agencies for the purposes of this paragraph. The licenses that are subject to
34 suspension under this paragraph (iii) are all licenses that are held by the employer
35 and that are necessary to operate the employer's business at the employer's
36 business location where the unauthorized alien performed work. If a license is
37 not necessary to operate the employer's business at the specific location where
38 the unauthorized alien performed work, but a license is necessary to operate the
39 employer's business in general, the licenses that are subject to suspension under
40 this subsection are all licenses that are held by the employer at the employer's
41 primary place of business. On receipt of the court's order and notwithstanding
42 any other law, the appropriate agencies shall suspend the licenses according to
43 the court's order. The court shall send a copy of the court's order to the attorney
44 general and the attorney general shall maintain a copy pursuant to subsection (7)
45 of this section.

(b) For a second violation, during the probationary period the court may order the appropriate agencies to suspend all licenses described in subsection (6)(a)(iii) of this section that are held by the employer for a period not to exceed ten (10) business days. The court shall base its decision to suspend pursuant to this subsection, on any evidence or information submitted to it during the action for a violation of the provisions of this section and shall consider the following factors, if relevant:

- (i) The number of unauthorized aliens employed by the employer;
- (ii) Any prior misconduct by the employer;
- (iii) The degree of harm resulting from the violation;
- (iv) Whether the employer made good faith efforts to comply with any applicable requirements;
- (v) The duration of the violation;
- (vi) The role of the directors, officers or principals of the employer in the violation;
- (vii) Any other factors the court deems appropriate.

(c) For a third or subsequent violation of subsection (1) of this section, during the probationary period the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work. If a license is not necessary to operate the performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. Upon receipt of the order and notwithstanding any other provision of law to the contrary, the appropriate agencies shall immediately revoke the licenses.

(7) The attorney general shall maintain copies of court orders that are received pursuant to subsection (6) of this section and shall maintain a database of the employers who have a first violation of the provisions of subsection (1) of this section and shall make the court orders available on the attorney general's website.

(8) On determining whether an employee is an unauthorized alien, the court shall defer to the federal government's determination pursuant to 8 U.S.C. section 1373(c). The federal government's determination creates a rebuttable presumption of the employee's employment authorization or lack of employment authorization. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 U.S.C. section 1373(c). On or before October 1, 2009, the attorney general shall make publicly available on the attorney general's website the requirements of this chapter upon employers.

(9) For purposes of this section, proof that an employer verified the employment authorization of an employee through E-Verify creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien with respect to that particular employee.

(10) For purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 U.S.C. section 1324a, and establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien with respect to that particular employee.

(11) In verifying the employment authorization of any individual with the federal government, all state, county and local officials, including judges, shall notify the individual in the event that the federal government responds with a "tentative nonconfirmation" of the individual's employment authorization. The contest procedure available to such an individual shall be allowed to occur, and the necessary time period for contesting a tentative nonconfirmation shall be allowed to run, consistent with applicable federal statutes and regulations.

44-404. EMPLOYER ACTIONS – FEDERAL LAW COMPLIANCE. The provisions of this chapter shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or state law.

44-405. VERIFICATION OF EMPLOYMENT ELIGIBILITY – PUBLIC EMPLOYERS – E-VERIFY – OFFICE OF PERFORMANCE EVALUATIONS. (1) Before hiring an employee, the state of Idaho shall verify the employment authorization of the employee through E-Verify.

(2) The director of the office of performance evaluations shall conduct a performance audit that evaluates the use of E-Verify by this state pursuant to subsection (1) of this section and shall include the following:

(a) The costs incurred by this state to verify the employment authorization of employees through E-Verify;

(b) The number of additional employees required by this state to verify the employment authorization of employees through E-Verify; and

(c) A summary of results and any error rates that occurred when E-Verify was used by this state.

(3) After October 1, 2009, every political subdivision of this state shall verify the employment authorization of all newly-hired employees through E-Verify.

44-406. AWARD OF CONTRACTS – EMPLOYEE VERIFICATION – DEFINITIONS. (1) No state agency shall award a contract to any contractor or subcontractor that provides services in this state unless the employment authorization of the employees of the contractor or subcontractor that perform services in this state has been verified by the contractor or subcontractor through E-Verify. The provisions of this subsection only apply to contracts that are awarded on and after October 1, 2009.

(2) After October 1, 2009, a political subdivision of this state shall not award a contract to any contractor or subcontractor that provides services in this state unless the employment authorization of the employees of the contractor or subcontractor that perform the services in this state will be verified by the contractor or subcontractor through E-Verify.

(3) Before a contract is awarded pursuant to this section, the contractor or subcontractor shall provide to the procurement officer of the state or political subdivision the E-Verify verification documents for all employees who will perform services under the contract.

(4) For purposes of this section, "services" means the furnishing of labor, time or effort in Idaho by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement of real property.

SECTION 4. That Section 49-303, Idaho Code, be, and the same is hereby amended to read as follows:

1 49-303. WHAT PERSONS SHALL NOT BE LICENSED. The department shall not
2 issue any driver's license, any instruction permit, privileges or right to drive and, if issued, may
3 revoke or cancel the driver's license of a person who:

4 (1) As an operator of a vehicle requiring a class D driver's license, is under the age of
5 seventeen (17) years, except that the department may issue a driver's license to any person
6 who has successfully completed an approved driver's training course, has completed the
7 requirements of a class D supervised instruction permit, and who is at least fifteen (15) years
8 of age, with driving privileges restricted to daylight hours only except as provided in section
9 49-307(9), Idaho Code, and with full privileges at sixteen (16) years of age. The restriction of
10 daylight hours only shall mean that period of time one-half (1/2) hour before sunrise to one-half
11 (1/2) hour after sunset. If a person who is at least fifteen (15) years but is under seventeen
12 (17) years of age has successfully completed an approved driver's training course and has been
13 issued a driver's license in another state, he may be issued a class D driver's license in this
14 state. Provided however, that a restricted school attendance driving permit may be issued to
15 those persons meeting the criteria set forth in section 49-307A, Idaho Code.

16 (2) As an operator of a vehicle requiring a class D driver's license, is under the age of
17 seventeen (17) years and has not successfully completed an approved driver's training course
18 and has not satisfied the requirements of a class D supervised instruction permit. Provided
19 however, that a restricted school attendance driving permit may be issued to those persons
20 meeting the criteria set forth in section 49-307A, Idaho Code.

21 (3) As an operator of a commercial vehicle requiring a class A, B or C driver's license is
22 under the age of eighteen (18) years.

23 (4) Applicants with less than one (1) year of driving experience, as evidenced by a
24 previous driver's license, shall not be issued a class A, B or C driver's license or a class A, B
25 or C instruction permit.

26 (5) As a driver has had his license, class D instruction permit, restricted school
27 attendance driving permit, privileges or right to drive suspended for the duration of the
28 suspension, nor to any person who has had his class D driver's training instruction permit or
29 class D supervised instruction permit canceled for the duration of the cancellation, nor to any
30 person whose license has been revoked, suspended, canceled or disqualified by this state or any
31 other jurisdiction; provided however, where a driver's license has been revoked, suspended,
32 canceled or disqualified in any other jurisdiction, and the driver has completed the period of
33 revocation, suspension, cancellation or disqualification as specified by the jurisdiction, that
34 person may be granted a class D driver's license in this state if five (5) years have elapsed from
35 the time of eligibility for reinstatement in the other jurisdiction, even though the driver has not
36 fulfilled the requirements for reinstatement in the other jurisdiction.

37 (6) Has been adjudged by a court of competent jurisdiction to be an habitual drunkard or
38 addicted to the use of narcotic drugs, and such order has been received by the department.

39 (7) Has been adjudged by a licensed physician or by a court of competent jurisdiction to
40 be afflicted with or suffering from any mental incompetence that would affect the person's
41 ability to safely operate a motor vehicle and who has not at the time of application been
42 restored to competency by the methods provided by law, and such order has been received
43 by the department.

44 (8) Is required by the provisions of this chapter to take an examination, unless that
45 person shall have successfully passed such examination.

1 (9) May be required under any law of this state to furnish proof of financial
2 responsibility and who has not furnished that proof.

3 (10) The department has good cause to believe that the operation of a motor vehicle on
4 the highways by that person would be harmful to public safety or welfare.

5 (11) Is disqualified for a class A, B or C driver's license, except he may be issued a class
6 D driver's license.

7 (12) Is under eighteen (18) years of age and is not enrolled in school, has not received a
8 waiver pursuant to or has not satisfactorily completed school as provided in section 49-303A,
9 Idaho Code.

10 (13) Is not a resident of the state of Idaho.

11 (14) Is not lawfully present in the United States.

12 (15) The department shall not issue any driver's license to an illegal alien nor to any
13 person who cannot prove his or her lawful presence pursuant to the provisions of chapter 4,
14 title 44, Idaho Code. A driver's license issued to an illegal alien in another state shall not
15 be honored by the state of Idaho and the Idaho transportation department for any purpose.
16 The state of Idaho hereby declares that granting driver's licenses to illegal aliens is repugnant
17 to the public policy of Idaho and therefore, the state of Idaho shall not extend full faith and
18 credit to out-of-state driver's licenses issued to illegal aliens. As used in this section, the term
19 "illegal alien" means an alien who is not lawfully present in the United States, according to
20 the terms of 8 U.S.C. section 1101, et seq. A driver's license shall not be issued to an illegal
21 alien applicant until the United States department of homeland security has verified that the
22 alien is lawfully present in the United States, using either the systematic alien verification for
23 entitlements program or another method of verification of status.

24 SECTION 5. That Chapter 2, Title 50, Idaho Code, be, and the same is hereby amended
25 by the addition thereto of a NEW SECTION, to be known and designated as Section 50-218A,
26 Idaho Code, and to read as follows:

27 50-218A. MUNICIPAL SANCTUARY PROHIBITED. (1) Any municipality that
28 enacts or adopts a sanctuary policy shall be ineligible for any moneys provided through grants
29 administered by any state agency or department until the sanctuary policy is repealed or is no
30 longer in effect. Upon the complaint of any state resident regarding a specific government
31 entity, agency or political subdivision of this state or prior to the provision of funds or awarding
32 of any grants to a government entity, agency or political subdivision of this state, any member
33 of the state legislature may request that the attorney general of the state of Idaho issue an
34 opinion stating whether the government entity, agency or political subdivision has current
35 policies in contravention of this section. For purposes of this section, the term "municipality"
36 means a city incorporated pursuant to title 50, Idaho Code.

37 (2) The governing body, sheriff or chief of police of each municipality shall provide each
38 law enforcement officer written notice of his duty to cooperate with state and federal agencies
39 and officials on matters pertaining to the enforcement of the provisions of this section.

40 (3) For the purposes of this section, a "sanctuary policy" is a written or unwritten policy
41 or practice that either:

42 (a) Directs officers not to ask any person whether he is a United States citizen, or what
43 his immigration status is; or

44 (b) In any way inhibits or discourages communication with the federal government
45 concerning any person's immigration status.

1 SECTION 6. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended
2 by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3035D,
3 Idaho Code, and to read as follows:

4 63-3035D. EMPLOYER NOTICE. On or before July 1, 2009, the state tax commission
5 shall provide a notice to every employer that is required to withhold tax pursuant to chapter
6 30, title 63, Idaho Code. The notice shall explain the requirements of chapter 4, title 44, Idaho
7 Code, including the following:

8 (1) A new state law prohibiting employers from knowingly employing an unauthorized
9 alien.

10 (2) For a first violation of this new state law during a three (3) year period, the court
11 shall order the appropriate licensing agencies to suspend all licenses held by the employer
12 unless the employer files a signed sworn affidavit with the prosecuting attorney within three (3)
13 business days. The filed affidavit must state that the employer has terminated the employment
14 of all unauthorized aliens and that the employer will not knowingly employ an unauthorized
15 alien. A license that is suspended will remain suspended until the employer files a signed
16 sworn affidavit with the prosecuting attorney. A copy of the court order will be made available
17 on the attorney general's website.

18 (3) For a second violation of this new state law, the court may order the appropriate
19 agencies to suspend all business licenses held by the employer for up to ten (10) business days.

20 (4) For a third violation of this new state law, the court will order the appropriate
21 licensing agencies to permanently revoke all licenses that are held by the employer.

22 (5) Proof of verifying the employment authorization of an employee through E-Verify, as
23 defined in section 44-402, Idaho Code, shall be a defense of good faith.

24 (6) Instructions for the employer on how to enroll in E-Verify, as defined in section
25 44-402, Idaho Code.

26 SECTION 7. The provisions of this act are hereby declared to be severable and if any
27 provision of this act or the application of such provision to any person or circumstance is
28 declared invalid for any reason, such declaration shall not affect the validity of the remaining
29 portions of this act.

30 SECTION 8. Section 4 of this act shall be in full force and effect on and after July
31 1, 2009. The remaining sections of this act shall be in full force and effect on and after
32 September 1, 2009.